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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,797	03/08/2004	Charles L. Gray JR.	310121.415	7696

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EXAMINER

KERSHTEYN, IGOR

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/795,797	Applicant(s) GRAY, CHARLES L.	
	Examiner Igor Kershteyn	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 and 20-30 is/are allowed.
- 6) ☒ Claim(s) 11-19 and 31-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/02/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 11-13 have been considered but are moot in view of the new ground(s) of rejection.

Claims 1-35 are now pending. Claims 12 and 13 are amended. New claims 31-35 are added.

With respect to the claim objections set forth on the first Office action, Applicant generally states that "The Examiner has provisionally objected to claims 12 and 13 as substantially duplicating claim 11. Claims 12 and 13 have been amended to clarify the applicant's intent with respect to the scope of claim 11. Claim 11 does not positively recite a pump casing or bearing (underlined by the Examiner), but rather recites the limitations of the yoke and trunnion as they relate to a pump casing and bearing, thus, claim 11 does not provide an antecedent basis for the pump casing recited in claim 12 or the bearing recited in claim 13. The amendment to claims 12 and 13 corrects this drafting error without changing the actual scope of any of claims 11-13. It is now clear that claims 12 and 13 each further limit the scope of claim 11 as required under 35 U.S.C. j 1 12, fourth paragraph, and is in compliance with the requirements of 37 C.F.R. j 1.75." This statement is not agreed with because, eventhough the bearing and the pump casing are not positively claimed, they are still recited (see underlined above) in the body of the claim 11 and do provide proper antecedent basis for the pump casing and bearing limitations.

With respect to claim rejections, Applicant generally states "The fluid channel does not exit the pin between the planes defined by the bearing 34, but rather exits along the axis of the pin. Accordingly, Molly fails to teach or suggest that limitation of claim 11." The Examiner concurs that Molly does not teach the channel exiting the trunnion via an aperture between the two planes but this argument as a whole is not nearly relevant to the obviousness rejections set forth in the first Office action because the teaching of Molly was not used to show the fluid channel exiting between the planes but simply to show how the primary reference to Ebert was modified to obtain the invention of claim 11. (See the Office action dated 12/19/2005, pages 2-3).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12, in line 2, recites the limitation "a pump" which renders the claim 12 indefinite because it is unclear either it is a new limitation or the limitation previously recited in claim 11, lines 3-4.

Claim 13, in line 2, recites the limitation "a bearing" which renders the claim 13 indefinite because it is unclear either it is a new limitation or the limitation previously recited in claim 11, line 4.

Claims 14-19 are indefinite by virtue of their dependency on claims 12 and 13.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, and 12-14, and 16 as far as they are definite, and 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert (2,931,250) in view of Molly (4,034,650).

In figures 1, 2, 4, and 4a, Ebert teaches a pump/motor comprising a yoke 72,73 configured to carry a rotatable barrel 26,27,74,75; a trunnion 28,29 coupled to the yoke 72,73 and configured to be received by an aperture (not numbered) of a pump casing 1, and a fluid channel 81,82,85,86 passing within the yoke 72,73 to the trunnion 28,29 and exiting the trunnion 28,29 via an aperture (not numbered) positioned between the two planes.

Ebert teaches all the claimed subject matter but he doesn't teach a bearing between the trunnion and a wall of the aperture in a position defined by two parallel planes transverse to an axis of the trunnion.

Molly, in figures 7-9, teaches a pump/motor having a yoke 8, and a bearing 34 between a trunnion 33 and a wall of the aperture in a position defined by two parallel planes transverse to an axis of the trunnion 4.

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Since Ebert and Molly are analogous art because they are from the same field of endeavor, that is the hydraulic bent axis piston machine art, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the machine of Ebert with the a bearing between the trunnion and a wall of the aperture as taught by Molly for the purpose of reducing friction between the trunnion and it's journal.

Claims 14 and 31 require the bearing "to occupy a portion of a circumference of the trunnion of less than 360 degrees" which do not define the structure of the bearing but non-positively recite a portion which the bearing occupies. And further, in the above claims the language "configured to" makes optional but does not limit the above claims to the structure of the components recited following the language "configured to".

See MPEP 2111.04

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert (2,931,250) as modified by Molly (4,034,650).

Ebert as modified by Molly teach all the claimed subject matter except that they don't teach the bearing has a shape of a section of a cone. Applicant has not disclosed that having the bearing having a shape of a section of a cone solves any stated problem or is for any particular purpose. Moreover, it appears that the bearing of Ebert as Modified by Molly, or applicant's invention, would perform equally well with the bearing having a shape of a section of a cone.

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Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have bearing of Ebert as modified by Molly such that the bearing has a shape of a section of a cone because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Ebert as modified by Molly.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert (2,931,250) as modified by Molly (4,034,650).

Ebert as modified by Molly teach all the claimed subject matter except that they don't teach the bearing is formed of a bronze alloy and the bearing is impregnated with lubricant. Applicant has not disclosed that having the bearing formed of a bronze alloy and the bearing impregnated with lubricant solves any stated problem or is for any particular purpose. Moreover, it appears that the bearing of Ebert as Modified by Molly, or applicant's invention, would perform equally well with the bearing formed of a bronze alloy and the bearing impregnated with lubricant.

Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have bearing of Ebert as modified by Molly such that the bearing formed of a bronze alloy and the bearing impregnated with lubricant because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Ebert as modified by Molly.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebert (2,931,250) as modified by Molly (4,034,650).

Ebert as modified by Molly teach all the claimed subject matter except that they don't teach the bearing comprises a cage frame configured to receive needle rollers, and a plurality of needle rollers coupled to the frame. Applicant has not disclosed that having the bearing comprises a cage frame configured to receive needle rollers, and a plurality of needle rollers coupled to the frame solves any stated problem or is for any particular purpose. Moreover, it appears that the bearing of Ebert as Modified by Molly, or applicant's invention, would perform equally well with the bearing comprising a cage frame configured to receive needle rollers, and a plurality of needle rollers coupled to the frame.

Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have bearing of Ebert as modified by Molly such that the bearing comprises a cage frame configured to receive needle rollers, and a plurality of needle rollers coupled to the frame because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Ebert as modified by Molly.

Allowable Subject Matter

Claims 1-10 and 20-30 are allowed.

Contact information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kershteyn whose telephone number is

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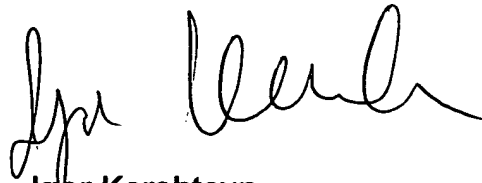
(571)272-4817. The examiner can be reached on Monday-Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached on **(571)272-4820**. The fax number is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308 0861.

IK

April 21, 2006

A handwritten signature in black ink, appearing to read 'Igor Kershteyn', written in a cursive style.

Igor Kershteyn
Patent examiner.
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